

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

U.S. ETHERNET INNOVATIONS, LLC,

Plaintiff,

v.

ACER, INC.; ACER AMERICA
CORPORATION; APPLE, INC.; ASUS
COMPUTER INTERNATIONAL; ASUSTEK
COMPUTER, INC.; DELL, INC.;
FUJITSU, LTD.; FUJITSU AMERICA,
INC.; GATEWAY, INC.; HEWLETT
PACKARD CO.; SONY CORPORATION;
SONY CORPORATION OF AMERICA; SONY
ELECTRONICS INC.; TOSHIBA
CORPORATION; TOSHIBA AMERICA,
INC.; and TOSHIBA AMERICA
INFORMATION SYSTEMS, INC.,

Defendants,

INTEL CORPORATION; NVIDIA
CORPORATION; MARVELL
SEMICONDUCTOR, INC.; Atheros
COMMUNICATIONS, INC.; and
BROADCOM CORPORATION,

Intervenors.

No. C 10-3724 CW

ORDER DENYING
WITHOUT PREJUDICE
INTERVENOR NVIDIA
CORPORATION'S
MOTION TO SEAL
(Docket No. 755 in
10-3724) AND
ADDRESSING
DEFENDANTS' AND
INTERVENORS'
MOTION TO SEAL
(Docket Nos. 756
in 10-3724 and 442
in 10-5254)

U.S. ETHERNET INNOVATIONS, LLC,

Plaintiff,

v.

AT&T MOBILITY LLC; BARNES &
NOBLE, INC.; CLAIRE'S BOUTIQUES,
INC.; J. C. PENNEY COMPANY, INC.;
SALLY BEAUTY HOLDINGS, INC.; ANN
TAYLOR STORES CORPORATION; ANN
TAYLOR RETAIL, INC.; HARLEY-
DAVIDSON, INC.; HARLEY-DAVIDSON
MOTOR COMPANY, INC.; KIRKLAND'S
INC.; KIRKLAND'S STORES, INC.;
MACY'S, INC.; MACY'S RETAIL
HOLDINGS, INC.; MACY'S WEST
STORES, INC.; NEW YORK & COMPANY,

No. C 10-5254 CW

1 INC.; LERNER NEW YORK, INC.;
2 RADIOSHACK CORPORATION; RENT-A-
3 CENTER, INC.; and THE DRESS BARN,
4 INC.,

5 Defendants.

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AND ALL RELATED CLAIMS,
COUNTERCLAIMS AND THIRD-PARTY
CLAIMS

Intervenor NVIDIA Corporation moves to seal portions of the declaration of Paul Sidenblad offered in support of the motion for partial summary judgment filed by Defendants and Intervenor and Exhibits A through F to the Sidenblad declaration.

These documents are connected to a dispositive motion. To establish that these documents are sealable, NVIDIA "must overcome a strong presumption of access by showing that 'compelling reasons supported by specific factual findings . . . outweigh the general history of access and the public policies favoring disclosure.'" Pintos v. Pac. Creditors Ass'n, 605 F.3d 665, 679 (9th Cir. 2010) (citation omitted). This cannot be established simply by showing that the document is subject to a protective order or by stating in general terms that the material is considered to be confidential, but rather must be supported by a sworn declaration demonstrating with particularity the need to file each document under seal. Civil Local Rule 79-5(a).

NVIDIA has filed a declaration stating that it has designated the relevant documents as "Highly Confidential" under the interim protective order and that they contain information that "generally relates to: (1) highly sensitive technical information concerning NVIDIA products accused by USEI; (2) a confidential license

1 agreement and communication between NVIDIA and 3Com Corporation;
2 and (3) highly sensitive NVIDIA source code." Gregorian Decl.

3 ¶ 3.

4 NVIDIA only describes the subject matter of the exhibits and
5 makes conclusory statements that it considers the material to be
6 confidential or sensitive. NVIDIA has failed to state what harm
7 it would experience if this material were publicly disclosed or to
8 provide any specific reasons, supported by facts, that could
9 outweigh the public policy favoring public access to court
10 filings.

11 Accordingly, NVIDIA's motion to file under seal is DENIED.
12 Pursuant to Civil Local Rule 79-5(f), within four days of the date
13 of this Order, NVIDIA may re-submit the documents for filing in
14 the public record or it may retain the documents and not make them
15 part of the record in this case. Alternatively, by that date,
16 NVIDIA may renew its request to file under seal, supported by a
17 proper declaration that establishes that the documents are
18 sealable as discussed above.

19 Intervenor Intel Corporation has filed a motion to seal on
20 behalf of all Defendants and Intervenors seeking to file under
21 seal the following documents: (1) their motion for partial summary
22 judgment; (2) the declaration of Jesse Brandenburg with Exhibit 1;
23 (3) the declaration of Itamar Sharoni with Exhibits 1-3; (4) the
24 declaration of Thomas Insley with Exhibits A and B; (5) the
25 declaration of John R. Schiffhauer; and (6) the declaration of
26 Justin Constant with Exhibits A.1 through A.24. In the motion,
27 Defendants and Intervenors state that the "Brandenburg and Sharoni
28 Exhibits contain highly confidential descriptions of Intel source

1 code and products, and attach excerpts of design documents that
2 Intel maintained as confidential, and information from Intel's
3 source code version control database," and that the "Insley
4 declaration discusses financial and licensing information that
5 Intel maintains as highly confidential." Docket No. 756, 2-3.
6 They also state that the "Constant Declaration contains exhibits
7 that pertain to confidential third-party licenses and licensing
8 practices, third-party sales and financial data, and deposition
9 testimony designated" as confidential under the interim protective
10 order. Id. at 3. They further state that the motion for partial
11 summary judgment "discusses the confidential information contained
12 in the supporting declarations and exhibits attached thereto."
13 Id.

14 Intel has submitted a declaration in support of the motion to
15 seal in which it states that "Local Rule 79-5(d) provides the
16 mechanism for Defendants and Intervenorors to submit that material
17 under seal." Stephens Decl. ¶ 2. However, Local Rule 79-5(d)
18 sets forth the procedure for a party to file under seal
19 information that has been designated as confidential by another
20 party, not by itself. To the extent that Defendants and
21 Intervenorors seek to file under seal documents or information that
22 they themselves have designated as confidential, as appears to be
23 the case for at least the Brandenburg, Sharoni and Insley
24 declarations and their attached exhibits, Local Rule 79-5(b) and
25 (c) provide the relevant procedure.¹ The Court notes that, in the

26 ¹ They do not address why they seek to seal the Schiffauer
27 declaration or which party or non-party has designated that
28 document as confidential.

1 only supporting declaration filed thus far, Intel has not provided
2 compelling reasons to seal these documents.² In addition,
3 although Defendants and Intervenors suggest that non-parties have
4 designated the exhibits to the Constant Declaration as
5 confidential, they have not disclosed who these non-parties are or
6 provided proof that they have served these non-parties with notice
7 of their motion to seal.

8 Accordingly, within one day of the date of this Order,
9 Defendants and Intervenors shall file a declaration setting forth
10 which party or non-party has designated each of the relevant
11 documents or information as confidential and shall provide proof
12 that they have served all non-parties with their motion to seal
13 and information about which documents and information they are
14 attempting to file. If Defendants and Intervenors themselves are
15 the designating party, by that date, Defendants and Intervenors
16 shall also file their declarations in support of their motion to
17 seal, providing compelling reasons to seal the information.

18 In the future, when filing motions to seal, all parties shall
19 make clear which party or non-party has designated as confidential
20 each purportedly sealable document and, if relevant, shall provide
21 proof of service upon non-parties.

22 IT IS SO ORDERED.

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24 Dated: 5/17/2013


CLAUDIA WILKEN
United States District Judge

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26 ² As discussed above, because Defendants and Intervenors seek
27 to seal documents related to a dispositive motion, the compelling
28 reason standard applies to the motion to seal, not a good cause
standard.